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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 09/328,931 | 06/09/99 | MORRIS | D TES-7356-003 |

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| EXAMINER | |
|------------|--------------|
| VERDIER, C | |
| ART UNIT | PAPER NUMBER |

3745

4

DATE MAILED:

11/04/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/328,931

Applicant(s)

Morris

Examiner

Christopher Verdier

Group Art Unit

3745



☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1 and 2 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1 and 2 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Jun 9, 1999 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited; PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Drawings

The drawings are objected to because figures 1-12 are replete with elements that are shown in cross section which must be indicated by hatching. Correction is required.

Specification

The abstract of the disclosure is objected to because it contains the term "is disclosed" (line 7) which is implied and should be deleted. Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities: Appropriate correction is required.

On page 1, line 5, the patent number for application 08/730,871 should be provided to update the continuing data.

On page 2, line 36, and page 3, line 5, "1a" should be changed to -- 1b --.

On page 3, lines 11, 16, 23, and 24, "1a" should be changed to -- 1b --.

On page 5, line 32, "28" should be changed to -- 26 --.

Claim Rejections - 35 USC § 112

Claims 1-2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 4, "substantially vertical mast" lacks antecedent basis.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Wallace (figure 2).

Note blades 18 which sweep out the shape of a virtual disk.

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilford (figure 5).

Note blades 10/11 which sweep out the shape of a virtual disk and means for controlling the camber 15.

Claims 1-2 are also rejected under 35 U.S.C. 102(b) as being anticipated by Kingsbury (figures 2-3). Note blades 16,17 which sweep out the shape of a virtual disk and means for controlling the camber 5/20.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible

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harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-2 are rejected under the judicially created doctrine of double patenting all over claim 1 of U. S. Patent No. 5,931,639 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: in U.S. Patent 5,931,639, the limitations in claim 1, lines 1-11 and 21-23.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

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Prior Art

Prior art made of record but not relied upon is considered pertinent to Applicant's disclosure and consists of 3 patents.

Griffith is cited to show a blade pitch control system using a swashplate.

Slechta is cited to show eccentric cyclic pitch control of aircraft rotors.

Parsons is cited to show a boat propeller with flexible blades cambered by turnbuckles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Verdier whose telephone number is (703) 308-2638. The examiner can normally be reached on Monday-Friday from 9:00 a.m. to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look, can be reached on (703) 308-1044. The fax phone number for this Group is (703) 305-3588.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

CV
October 29, 1999



Christopher Verdier
Primary Examiner
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